IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.6524 OF 2005

Mrs. Kavita Keshav Kolhapure. ...Petitioner.
Vs.
State of Maharashtra & Ors. ...Respondents.

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Mr. S.M. Rairikar i/b. Mr. A.M. Joshi for the Petitioner.
Mrs. M.P. Thakur, AGP for Respondent Nos.1 and 2.
Mr. S.V. Marne for Respondent Nos.3 and 4.

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CORAM : F. I. REBELLO AND
DR.D.Y.CHANDRACHUD, JJ.

February 22, 2006.

P.C. (Per Dr. D.Y. Chandrachud, J.) :

The Petitioner challenges an order passed by the Divisional Social Welfare Officer on 15th January 2002, dismissing an appeal filed by her under the Special Schools Code. The Petitioner had initially challenged the order of termination before the School Tribunal. The Tribunal set aside the termination on 23rd August 2004 and directed that the Petitioner be reinstated with full back wages. The order of the School Tribunal was challenged by the management in a petition under Article 227 of the Constitution which was admitted by a Learned Single Judge of this Court on 4th May 2005. A Full Bench of this Court held in **Suryakant Sheshrao Panchal vs. Vasantrao Naik Vimukta Jati, Bhatakya Jamati**

Aadarsh Prasarak Mandal, 2002(3) Mh. L.J. 659, that a teacher employed in an Ashram School or a School for the handicapped, conducting classes from the 1st to the 7th Standards and not requiring recognition from the Board cannot maintain an appeal under Section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977. In the circumstances, the petition filed by the management was admitted and the order of the Tribunal is stayed. Thereupon, the Petitioner has challenged the order of the Divisional Social Welfare Officer by which her appeal against the order of termination was dismissed.

2. The Petitioner was initially appointed on 9th June 1997 on a temporary basis from 1st October 1997 until 30th April 1998. In the year 1997, three Special Teachers were working in the Fourth Respondent School. Under the Special Schools Code, teachers employed in such a school are required to obtain requisite training from an institution recognised by the Rehabilitation Council of India. Two of the three Special Teachers engaged in the school were deputed for training between 1st July 1997 and 12th April 1999. Against one of such temporary vacancies, the Petitioner came to be appointed between 1st October 1997 and 30th April

1998. These facts have been adverted to in the reply filed by the management. The management has also stated that under para 49(2) of the Special School Code, the maximum age limit for appointment of a Special Teacher is 30 years. The Petitioner whose date of birth is 4th September 1954, was 43 years of age at the time of her initial appointment and she was, in any case, not eligible for regular appointment. The services of the Petitioner came to be dispensed with after the period of appointment came to an end. The two teachers who had been deputed for training, completed training and joined the School with effect from 30th April 1998 which was intimated by the School to the Director of Social Welfare. Sanction was accorded by the Second Respondent to the appointment of the aforesaid two teachers who had already been in service as Special Teachers in the pay scale of 1200-2040, by an order dated 1st March 1999. The appointment of the third Teacher had already been sanctioned on 20th May 1998. The Divisional Social Welfare Officer had, in these circumstances, and, while adverting to these facts, dismissed the appeal filed by the Petitioner. Having considered the matter and the submissions urged on behalf of the Petitioner, we do not find any infirmity in the order of the Divisional Social Welfare Officer. The Petitioner was a

temporary employee. The terms of her engagement were limited by duration. The Petitioner was appointed in view of the fact that the existing teachers were sent on training. On their return, the Petitioner was not continued in service. Sanction was accorded by the Department to all the three teachers. In these circumstances, there is no merit in the petition. The Petition is accordingly dismissed.

(F. I. Rebello, J.)

(Dr.D. Y. Chandrachud, J.)